

## ADMINISTRATION TEAM MINUTES

**Date:** June 7, 2002  
**Time:** 9:00 am  
**Place:** Tacoma AGC Building

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<b><u>Attending:</u></b>	Cathy Arnold	<u>✓.</u>	Ron Howard	<u>✓.</u>	Larry Schofield	<u>✓.</u>
	Dave Banke	<u>   </u>	Carl Jonasson	<u>   </u>	Mark Scoccolo	<u>✓.</u>
	Jerry Brais	<u>✓.</u>	Bill Loring	<u>✓.</u>	Bill Senta	<u>   </u>
	Doug Ficco	<u>✓.</u>	Craig McDaniel	<u>✓.</u>	Greg Waugh	<u>   </u>
	Mike Hall	<u>✓.</u>	Cathy Nicholas	<u>✓.</u>	Tom Zamzow	<u>✓.</u>
	Bob Hilmes	<u>✓.</u>	Mark Rohde	<u>✓.</u>		

**Opening:** The minutes of the May 10<sup>th</sup> meeting were approved.

### **Quality Roundtable**

Mark Scoccolo reports that the Maytown job (A+B Bidding) appears to be headed for a timely completion with no penalty. SCI is bidding good-sized city and county jobs and has a comfortable workload.

Mike Hall says that Goodfellow is mostly in private work this year, with a significant job with Quadrant.

Bob Hilmes noted that Kevin Dayton is carrying the team's recommendations concerning contractor performance evaluations to the Regions, that Kevin and Ken Walker visited Spokane this week to survey the Eastern Region project engineers. For the record, today is Bob's 20<sup>th</sup> anniversary with the Department.

Mark Rohde has been low bidder on several jobs (too low?). He's working on a bid for the Northgate project and is looking at work out of state.

Jerry Brais described a vigorous King County workload for this year and virtually nothing next year without additional revenue.

## **AGC/WSDOT ADMINISTRATION TEAM**

### **MINUTES (cont)**

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Bill Loring says that Pierce County is in good shape, with plenty of work both this year and next. The county fell behind in design in the past couple of years and is playing catchup now. The big Nisqually project opens next Friday.

Doug Ficco announced that Southwest Region has gone to 100% Superpave this year. This has affected mix designs from some established pits. His Region is starting use of the cyclic segregation spec, using thermal imaging and visual inspection.

Cathy Nicholas related office news from FHWA. She will be doing some asphalt paving inspections this summer and will be taking Area Engineers along to help train them. Note that TEE's (Transp & Enviro Engineers) are once again being called Area Engineers. Cathy says that the Division has added a new supervisor in James Christian.

Cathy Arnold is watching the Northgate bidding and looking for good proposals. The Issaquah super-sized girder made it to the jobsite this morning. Another is to follow from Vancouver this weekend. Cathy described the Northwest Region/Urban Corridors relationship and noted that UCO is overall responsible for Sound Transit projects.

Craig McDaniel has finished his change order training for this year and is working on establishing Headquarters review standards for change order documents and supporting memoranda. He is getting involved in the update effort on the Department's plans for External Civil Rights actions. The hot topics seem to be Bidders' Lists, Utilization Reporting and Prompt Pay.

Larry Schofield announced that the Highways and Local Programs Office has named its new Director. Kathleen Davis is now at the helm. Work has started on a revision of the LAG Manual. There have been a large number of local agency projects in the past few weeks.

Tom Zamzow described changes at Wilder. Dave Ghent has left to join ICON and Steve Liikala has returned from Robison. The company has added a Pit/Plant manager to cover all Western Washington operations. They've been bidding a lot, but not much WSDOT work. The company has a good load to the north and is slow in the environmental arena. Civil work is carrying the load this year.

Ron Howard described negotiations with Sound Transit for work on the Interstate R/W and discussed several large issue settlement change orders that are in the office right now. Ron noted that it is pleasing to see that, in most of these resolutions, a prior estimated payment has already been made and the package in hand is the full documentation with a lesser cost adjustment.

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**Old Business—Traffic Control**

The team discussed the following proposed principle from last month:

- The cost of traffic control used in excess of the amount truly necessary should be borne by the one who determines the approach to the work.

Discussion minutes:

If we go here, maybe there could be a post-award review of staging, sequence and plan quantities. It could be possible to adjust plan quantities and assign responsibility for overruns of the revised plan.

But the bid might have included savings resulting from alternate traffic control and the State already has that money, part to be spent on traffic control overruns. Maybe include the assumed sequence as part of the plan?

We could set a minimum number of hours.

What about State-ordered adjustments (add a flagger) is the Contractor responsible for overruns?

Alaska sets a price (lower than cost) for traffic control labor and does not have a plan quantity. Every hour of flagging costs the State and the Contractor and encourages restraint by both. The contractor's share of flagging costs would be in a lump sum traffic bid or included in quantity prices. Traffic control is part of all change order negotiations.

CalTrans pays 50% of a cost-plus calculation and a lump sum for everything else. Same effect on change order negotiations.

With labor payment fixed at below cost, it would be necessary to include full-price traffic control in all force account payments.

This type of labor payment would raise cain with DBE commitments.

Not really, it would cause some difficulty in assessing the contractor's dollar commitment.

We have to remember that our goal is to reduce the exposure of the traveling public.

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### **Old Business—Traffic Control (cont)**

Calendar date completions accomplish a reduction in traffic control overruns, but at a terrible price in contract administration and hidden bid costs.

In light of all this, the team reached agreement on two new controlling assumptions:

- In all construction operations, we will achieve adequate traffic control.
- We need traffic control specifications that provide incentive to both owners and contractors to control costs.

Finally, the team discussed the last proposed principle and accepted it as written:

- Specifications and Construction Manual instructions should lead to higher consistency of application among all project offices.

With these three principles added to last month's partial list, (full list attached) the team passed the task on to the sub-team (McDaniel, Waugh, Frank Newboles and Howard) with the assignment to draft up a spec package over the summer and return it to the full team at the September meeting.

### **Old Business—Quantity Variations**

The team picked up last year's efforts to revise Section 1-04.6 and looked at a proposed draft of a new spec.

Agreement was reached to drop the idea of reimposing a threshold amount. Since this was based on original bid value, it was felt that a bad bid (low) could trap a contractor into a large cost damage without ever tripping the threshold. The owner's reps present agreed that the problem had not been real pressing for the past couple of years and may have gone away.

The paragraph reaffirming the Section 1-08 statement that time extensions only kick in after the 25% overrun was challenged. Not fair, said several members. Final resolution was to leave the statement here in support of Section 1-08 and then add Section 1-08 to the "Roundtuit List" for future discussion.

The provisions prohibiting price negotiations on force account quantities proved unacceptable. There is too much chance for delay impacts and effects on other work to leave this as a contingency bid. The language was removed for increases and left in place for decreases.

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Contractors would still not be able to claim loss of contribution to overhead due to force account underruns.

The minor change to Section 1-04.4 was acceptable provided it used the same language describing change orders as will exist in 1-04.6.

The “final” draft provisions for Sections 1-04.4 and 1-04.6, representing the Admin Team’s recommendation for change, are attached.

### **Future Meetings**

September 13<sup>th</sup> @ Tacoma AGC (9:00 am)

October 18<sup>th</sup> @ Tacoma AGC (9:00 am)

November 15<sup>th</sup> @ Tacoma AGC (9:00 am)

January 10<sup>th</sup>, 2003 location to be determined

### **Assignment List**

<u>Who</u>	<u>What</u>	<u>By When</u>
Craig McDaniel	Demonstrate FA Computer Application	Next Year
Traffic Subteam	Draft Spec Package	September 13 <sup>th</sup>

### **Team’s “Round Tuit” List**

1. Traffic Control Provisions
2. Web-Based Construction Management
3. Policy and Practice on Deferrals
4. Short-term Scheduling
5. Defining Lump Sum Items
6. Joint Training—Documentation
7. Payroll, Wage Administration procedures
8. Materials on Hand provisions
9. Progress Schedules
10. Disputes Review Boards
11. Tort Claims Liability/Accident Reports
12. Bid Item for On-site Overhead
13. Section 1-08.8, p5.c—Extensions for Quantity Overruns?

## **AGC/WSDOT Admin Team**

### **Traffic Control Discussion**

The team has been able to reach consensus agreement that the following list should be the initial philosophy of the Owner/Contractor relationship in specs and Construction Manual instructions to be developed by the Sub-Team.

- The contract should provide a mechanism to compensate the Contractor for traffic control efforts.
- WSDOT generally should not use specifications to dictate how the Contractor carries out contract requirements. Exceptions should only be directly related to quality or public convenience and safety.
- Traffic control on contracts should allow the work to proceed, but while achieving the least possible impact to the public and balancing the benefit with the cost of doing so.
- Traffic control payment methods should simplify administration and reduce the possibility of conflict among field personnel.
- Lump sums are appropriate for smaller, simpler jobs where the traffic control can be easily envisioned and estimated.
- Incentives and disincentives should be considered on jobs where lump sums are not used.
- Innovative specs, such as lane rental and incentive/disincentive traffic clauses should be used on a trial basis, but soon enough and often enough that their effectiveness can be assessed.
- Strong efforts in design are needed to assure that plan quantities are realistic and are based upon a legitimate view of how the work might progress.
- The owners and the contractors should mount a serious campaign of public relations to show the public the many positive results that are already being achieved.
- Traffic control specifications should support a high level of predictability of the outcome of the costs on the project.
- The nature and level of State Patrol and other law enforcement involvement in construction projects should be determined and specified.
- In all construction operations, we will achieve adequate traffic control.
- We need traffic control specifications that provide incentive to both owners and contractors to control costs.
- Documents, including Specifications, Construction Manual instructions, Design Manuals and Plan Prep guides, should lead to higher consistency of application among all project offices.

## Admin Team Recommendation, Section 1-04.4

### 1-04.4 Changes

The Engineer reserves the right to make, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered. Among others, these changes and alterations may include:

1. Deleting any part of the work,
2. Increasing or decreasing quantities,
3. Altering specifications, designs, or both,
4. Altering the way the work is to be done,
5. Adding new work,
6. Altering facilities, equipment, materials, services, or sites, provided by the Contracting Agency.
7. Ordering the Contractor to speed up or delay the work.

The Engineer will issue a written change order for any change unless the remainder of this section provides otherwise.

If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract. The term *significant change* shall be construed to apply only to the following circumstances:

- A. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or
- B. When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. For the purpose of this section, a major item of work will be defined as any item that qualifies for adjustment under the provisions of Section 1-04.6.

For Item 1, an equitable adjustment for deleted work will be made as provided in Section 1-09.5. For Item 2, if the actual quantity, exclusive of added or deleted amounts included in change orders accepted by both parties, of any item increases or decreases by more than 25 percent from the original plan quantity, the unit contract prices for that item may be adjusted in accordance with Section 1-04.6.

For any changes except Item 1 (deleted work) or Item 2 (increasing or decreasing quantities), the Engineer will determine if the change should be paid for at unit contract price(s). If the Engineer determines that the change increased or decreased the Contractor's costs or time to do any of the work including unchanged work, the Engineer will make an equitable adjustment to the contract. The equitable adjustment will be by agreement with the Contractor. However, if the parties are unable to agree, the Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4 and adjust the time as the Engineer deems appropriate.

Extensions of time will be evaluated in accordance with Section 1-08.8. The Engineer's decision concerning equitable adjustment and extension of time shall be final as provided in Section 1-05.1.

## **Admin Team Recommendation, Section 1-04.4**

The Contractor shall proceed with the work upon receiving:

1. A written change order approved by the Engineer, or
2. An oral order from the Project Engineer before actually receiving the written change order.

Changes normally noted on field stakes or variations from estimated quantities, except as provided in sub-paragraph A or B above, will not require a written change order. These changes shall be made at the unit prices that apply. The Contractor shall respond immediately to changes shown on field stakes without waiting for further notice.

The Contractor shall obtain written consent of the surety or sureties if the Engineer requests such consent.

The Contracting Agency has a policy for the administration of cost reduction alternatives proposed by the Contractor. The Contractor may submit proposals for changing the Plans, Specifications, or other requirements of the Contract. These proposals must reduce the cost or time required for construction of the project. When determined appropriate by the Contracting Agency, the Contractor will be allowed to share the savings.

Guidelines for submitting Cost Reduction Incentive Proposals are available at the Project Engineer's office. The actions and requirements described in the guidelines are not part of the Contract. The guidelines requirements and the Contracting Agency's decision to accept or reject the Contractor's proposal are not subject to arbitration under the arbitration clause or otherwise subject to litigation.



## 1-04.6 Team Proposal with Rev and Comments shown

### 1-04.6 Increased or Decreased Quantities

The change here sets the basis for comparison to the plan quantity as the “net” increase or decrease, which is the final accepted quantity adjusted by any quantities included in change orders. Also cleaned up language to assure that we’re discussing each item independently. Eliminated the reference in the last sentence to pricing a portion of a decrease that exceeds 25%. That “portion” would be imaginary and could not be priced.

Payment to the Contractor will be made only for the actual quantities of work performed and accepted in conformance with the contract. When the accepted ~~quantities~~ quantity of work performed under a unit item vary-varies from the original bid ~~quantities~~ quantity, payment will be at the unit contract ~~prices~~ price for accepted work unless the total quantity of any contract item, using the original bid quantity exclusive of added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25 percent from the original bid quantity. In that case ~~that part of the increase or decrease exceeding 25 percent will~~ payment for contract work may be adjusted as follows:

Revised the increased quantity discussion to accommodate the change order exclusion.

#### 1. Increased Quantities.

Either party to the contract will be entitled to renegotiate the price for that portion of the actual quantity in excess of ~~125 percent of~~ 1.25 times the original bid quantity and which is not included in change orders accepted by both parties. The price for increased quantities will be determined by agreement of the parties, or, where the parties cannot agree, the price will be determined by the Engineer based upon the actual costs to perform the work, including reasonable markup for overhead and profit.

The following revisions serve to separate the discussion of decreases from that of increases, eliminating some logic flaws. It includes the adjustments for CO quantities and establishes three (and only three) areas of entitlement for underrun negotiations.

#### 2. Decreased Quantities.

Either party to the contract will be entitled to an equitable adjustment if the actual quantity of work performed, adjusted for change orders accepted by both parties, is less than 75 percent of the original bid quantity. The equitable adjustment ~~in the case of decreased quantities~~ shall be based upon and limited to three factors: 1. Any ~~any~~ increase or decrease in unit costs of labor, materials or equipment utilized for work actually performed and resulting ~~due solely to~~ from the ~~variation of the estimated~~ reduction in quantity; 2. Changes in production rates or methods of performing work actually done to the extent that the nature of the work actually performed differs from the nature of the work included in the original plan; and 3. An adjustment for the anticipated contribution to unavoidable fixed cost and overhead from work

## 1-04.6 Team Proposal with Rev and Comments shown

~~not performed up to 75% of the original plan quantity. The total payment for any item will be limited to no more than 75 percent of the amount originally bid for the item.~~

The following limitations shall apply to ~~the adjustment~~ renegotiated prices for increases and/or equitable adjustments for decreases:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement (referred to in Section 1-09.6) that is in effect at the time the work is performed ~~as referred to in Section 1-09.6.~~
2. No payment will be made for extended or unabsorbed home office overhead and field overhead expenses to the extent that there is an unbalanced allocation of such expenses among the contract bid items.
3. No payment for consequential damages or loss of anticipated profits will be allowed because of any variance in quantities from those originally shown in the proposal form, contract provision, and contract plans.
4. The total payment (including the adjustment amount and unit prices for work performed) for any item which experiences an equitable adjustment for decreased quantity shall not exceed 75% of the amount originally bid for the item.

Reaffirms that the first 25% of quantity variation is at the risk of the parties and adds language concerning doing work that stays within these limits not only for the bid price, but also at the bid time for completion. (to conform with 1-08.8(5b)).

If the final measured quantity of any item, adjusted to exclude increases and decreases in change orders accepted by both parties, does not vary from the quantity shown in the proposal by more than 25%, then the Contractor and the Contracting Agency agree that all work under that item will be performed at the original contract unit price and within the original time for completion.

When ordered by the Engineer, the Contractor shall proceed with the work pending determination of the cost or time adjustment for the variation in quantities.

Modifies previous language exempting all plan force accounts from the section. Prevents a claim for lost overhead in a force account underrun, but leaves the door open for time extensions (or reductions) for all force account variations and for impacts and effects on unchanged work in the case of force account overruns. There is no need to address direct costs in either case, as these will be handled in the force account itself.

The Contractor and the Contracting Agency agree that there will ~~not adjust for increases or be no cost adjustment for~~ decreases if the Contracting Agency has entered the amount for the item in the proposal form only to provide a common proposal for bidders.

## **1-04.6 Proposed Spec (cleaned up)**

### **1-04.6 Increased or Decreased Quantities**

Payment to the Contractor will be made only for the actual quantities of work performed and accepted in conformance with the contract. When the accepted quantity of work performed under a unit item varies from the original bid quantity, payment will be at the unit contract price for accepted work unless the total quantity of any contract item, exclusive of added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25 percent from the original bid quantity. In that case payment for contract work may be adjusted as follows:

#### **1. Increased Quantities.**

Either party to the contract will be entitled to renegotiate the price for that portion of the actual quantity in excess of 1.25 times the original bid quantity and which is not included in change orders accepted by both parties. The price for increased quantities will be determined by agreement of the parties, or, where the parties cannot agree, the price will be determined by the Engineer based upon the actual costs to perform the work, including reasonable markup for overhead and profit.

#### **2. Decreased Quantities.**

Either party to the contract will be entitled to an equitable adjustment if the actual quantity of work performed, adjusted for change orders accepted by both parties, is less than 75 percent of the original bid quantity. The equitable adjustment shall be based upon and limited to three factors: 1. Any increase or decrease in unit costs of labor, materials or equipment utilized for work actually performed and resulting solely from the reduction in quantity; 2. Changes in production rates or methods of performing work actually done to the extent that the nature of the work actually performed differs from the nature of the work included in the original plan; and 3. An adjustment for the anticipated contribution to unavoidable fixed cost and overhead from work not performed up to 75% of the original plan quantity.

The following limitations shall apply to renegotiated prices for increases and/or equitable adjustments for decreases:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement (referred to in Section 1-09.6) that is in effect at the time the work is performed.
2. No payment will be made for extended or unabsorbed home office overhead and field overhead expenses to the extent that there is an unbalanced allocation of such expenses among the contract bid items.
3. No payment for consequential damages or loss of anticipated profits will be allowed because of any variance in quantities from those originally shown in the proposal form, contract provision, and contract plans.
4. The total payment (including the adjustment amount and unit prices for work performed) for any item which experiences an equitable adjustment for decreased quantity shall not exceed 75% of the amount originally bid for the item.

If the final measured quantity of any item, adjusted to exclude increases and decreases in change orders accepted by both parties, does not vary from the quantity shown in the proposal by more than 25%, then the Contractor and the Contracting Agency agree that all work under that item will be performed at the original contract unit price and within the original time for completion.

When ordered by the Engineer, the Contractor shall proceed with the work pending determination of the cost or time adjustment for the variation in quantities.

The Contractor and the Contracting Agency agree that there will be no cost adjustment for decreases if the Contracting Agency has entered the amount for the item in the proposal form only to provide a common proposal for bidders.